ROSE KUOK KOK HIANG

v.

DAVID KUOK KHOON HIN

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[DIVORCE PETITION NO. 500/85]
2 JULY 1986

FAMILY LAW: *Application pendente lite by petitioner for maintenance for herself and financial support for her 3 children - Amount of maintenance pending suit - Discretion of Court to award what sum it considers just - Means of both parties.*

The proceedings leading to this appeal commenced by way of an application *pendente lite* by a petitioner for maintenance for herself and financial support for the 3 children of the marriage. The petitioner alleged that she was forced out of the matrimonial home together with her 3 sons on 29 July 1985 by the cruel and violent acts of the respondent who even threatened her life. Since that date, the respondent had not maintained her and her children and she had since taken refuge with her uncle and aunt who provided her and her children with food and shelter and a brother who gave her RM1,000 per month for her upkeep.

Held:

[1] The application for maintenance pending suit is in no way disputed as the respondent is all too well advised that as long as the marriage subsists, he is legally bound to maintain his wife and children and the purpose of obtaining the order is to ensure that the petitioner and her children obtain a sufficient allowance until the outcome of the proceedings.

[2] What is disputed is the amount of maintenance to be paid by the respondent. In this respect, the Court has an unfettered discretion to award what sum it considers just.

[3] Since the respondent had been giving her RM2,500 per month whilst they were living together, and as that amount is in no way unreasonable, the Court ordered the respondent to provide RM2,500 per month as maintenance to the petitioner from 1 August 1985 until the final order for maintenance has been made.

[Costs of application to petitioner.]

For the wife/applicant - P.G. Lim; M/s. Morris Edgar & Paul Raj
For the husband/respondent - Ronald Khoo (Foo with him); M/s. Shearn Delamore & Co.

JUDGMENT

Siti Norma Yaakob J:

The proceedings leading to this appeal commenced by the way of an application *pendente lite* by the petitioner for maintenance for herself and financial support for the 3 children of the marriage aged 17, 13 and 12. However, for the purpose of the appeal, my judgment is devoted only to the orders I made relating to the financial provisions for the petitioner.

The petitioner alleges that she was forced out of the matrimonial home together with her 3 sons on 29 July 1985, by the cruel and violent acts of the respondent who even threatened her life. Since that date, the respondent has not maintained her and her children and she has since taken refuge with her uncle and aunt who provide her and her children with food and

shelter and a brother who gives her RM1,000 per month for her upkeep. Since her marriage to the respondent 18 years ago, the petitioner has not been gainfully employed and has been totally dependent on the respondent for all her financial needs. It is not disputed that she has no property of her own apart from some items of jewellery which, with much difficulty, the respondent reluctantly returned them to her, in my presence.

The application for maintenance pending suit is in no way disputed as the respondent is all too well advised that as long as the marriage subsists, he is legally bound to maintain his wife and children and the purpose of obtaining the order is to ensure that the petitioner and her children obtain a sufficient allowance until the outcome of the proceedings. Consequently, any allegation of misconduct on the part of the petitioner can hardly be relevant in application of this nature, especially so when the allegation is intended to reduce the amount payable. However, what is disputed is the amount of maintenance to be paid by the respondent and in this respect, the Court has an unfettered discretion to award what sum it considers just.

To enable the Court to decide so, an affidavit of means by both parties would assist the Court greatly and in this respect, the petitioner has made full disclosure that during the 18 years of marriage, she has nothing to call her own apart from the few items of jewellery I mentioned earlier. The respondent, on the other hand, has taken the attitude that he is under no duty to disclose his assets and financial standing as this is only an interim application and that such information will be disclosed later when the final order for maintenance will be heard and disposed off. Written requests by the petitioner's solicitors to elicit all necessary information as to his means have remain unanswered and the respondent has pleaded that the information asked for not only requires extensive research and verification of accounts for which he, a chartered accountant, was not prepared to do, but that it also hinges on the disclosure of confidential matters. I do not consider that what the petitioner wanted is an elaborate statement of accounts but what she really required for the purpose of her application is for him to disclose all his personal assets and what he owned in the family company called Parquin Sdn. Bhd., which was set up by the respondent for himself, the petitioner and the children. The petitioner was appointed a director of this company but she never received any director's fees. A chart of this company which is exhibited shows a net asset value of more than RM2 million and the respondent is described as being the director primarily responsible for all financial arrangements of the company's investments in a number of other companies.

Whatever may be the true reason, it is abundantly clear that the respondent is most reluctant to make full disclosure of his means of financial standing other than to declare:

1. his yearly income of RM30,000 as a director of his many family companies,
2. a flat in Singapore which he purchased in 1972 from funds given to him by his late father, and
3. receipt of director's fees of HK$60,000 from a Hong Kong company and £2,000 from Tanjong Tin Dredging PLC in 1984.

He has also exhibited his income tax returns for the years 1983 and 1984 but on closer perusal, I find that the return for 1983 relates to the additional tax payable and it does not therefore reflect the true position of his income for 1982. Likewise, the second return which is for the 1984 year of assessment, is a revision of an earlier return which is not exhibited. I find these two returns misleading as they do not truly show his income as a chartered accountant for the 2 years in question.

He has also admitted that he is a director of Unipar Sdn. Bhd., a trustee of the family trust fund named after his late father of which he, his three children and other family members are the beneficiaries. He is not prepared to disclose the value of the trust fund other than to state that his shareholdings in the company are worth no more than their par value as the company is only a trustee company with no investments whatsoever.

Reading the many affidavits filed by both the petitioner and the respondent, it is clear, that apart of what has been disclosed by the respondent, whatever property or assets that he has, are all in the names of his family companies for which he appears to be in complete control and details of which he was not prepared to disclose for the purpose of this application. For that matter too, even the car which he had given to the petitioner for her use and which he had taken away after she left the matrimonial home, is registered in the name of one of the family's companies and there is even no indication in whose name the matrimonial home is registered.

There can be no doubt whatsoever that the respondent is a wealthy man as he has been supporting all his three sons in exclusive public schools in England, paying for their passages home during their school holidays three times a year, not to mention the trips both he and the petitioner made to see them in England. However, in the light of his reluctance to disclose his true financial worth, I am only left with the petitioner's assertion that when her 3 sons were schooling in England, the respondent would pay her RM2,500 per month for her upkeep and household expenses, thereby, suggesting that the respondent used to give her more when his 3 children were back for their school holidays. As custody of the 3 children has already been given to the petitioner, it is only reasonable to expect that she will have to provide a home for herself and 3 children and that she cannot continue to live off her own relatives. This will involve finding rented premises for herself and her children, expenses for her upkeep and transportation as the respondent had taken away the car that she had been using when she was living with him. Since the respondent had been giving her RM2,500 per month whilst they were living together, and as I do not consider that this sum will cause any more hardship to the respondent, or that the amount is in any way unreasonable, I had ordered that the respondent provide RM2,500 per month maintenance to the petitioner with effect from 1 August 1985 until the final order for maintenance has been made.

As I have stated above, the 3 sons of the marriage are schooling in England and have been coming home for holidays at least 3 times a year. However, following their last visit home and the circumstances leading to their leaving the matrimonial home, the respondent took a very selfish attitude in withholding their passports and their return air ticket to England, resulting in their missing one school term even though fees for that term had already been paid for by him. His reason for doing so was to demand their respect which he considers he is entitled to as their father. Respect, like other forms of relationship, is not only a one way commitment. Just as the respondent yearns for the respect of his sons, he must also, at least by example, show that he is a father to be respected. My interview with the 3 boys whom I find to be intelligent and mature for their ages showed that they dread the respondent as a person and find it difficult to regard him as their father because of his cruel and violent acts towards them and their mother and his frequent use of foul language.

Following this show of what he and his money can do, the respondent has also declared before me that in future it may become necessary that he will not pay for their passages home for their school holidays. This has prompted the petitioner to apply orally, in addition to the maintenance order that the respondent pay for her return air ticket to enable her to see her children in England, at least once a year. To me, this does not seem too much to ask

for as she has been used to making regular trips to England to see them, the expenses for which must have been borne by the respondent. Moreover, as custody of the 3 children has already been given to her, I can only conclude that the respondent's intention not to bring the children home for their holidays as an attempt to thwart that custody order and this makes it more justifiable that the petitioner should see them instead in England, especially during the long summer holidays, when the children will be left on their own with the youngest 2 being only 13 and 12. On that consideration, I had accordingly ordered that the respondent provide a return air ticket once a year to the petitioner to enable her to see her 3 children in England. I had also awarded costs of the application to the petitioner.

Also found at [1986] 2 CLJ 316